



**DEPARTMENT OF TRANSPORTATION**

**National Highway Traffic Safety Administration**

**[Docket No. NHTSA-2015-0113; Notice 2]**

**Nitto Tire U.S.A, Inc., Grant of Petition for Decision of  
Inconsequential Noncompliance**

**AGENCY:** National Highway Traffic Safety Administration (NHTSA),  
Department of Transportation (DOT).

**ACTION:** Grant of petition.

**SUMMARY:** Nitto Tire U.S.A., Inc. (Nitto), has determined that certain Nitto NT05 passenger car tires manufactured between December 14, 2014 and August 1, 2015, do not fully comply with paragraph S5.5(e) of Federal Motor Vehicle Safety Standard (FMVSS) No. 139, *New Pneumatic Radial Tires for Light Vehicles*. Nitto filed a report<sup>1</sup> pursuant to 49 CFR part 573, *Defect and Noncompliance Responsibility and Reports*. Nitto then petitioned NHTSA under 49 CFR part 556 requesting a decision that the subject noncompliance is inconsequential to motor vehicle safety.

**ADDRESSES:** For further information on this decision contact Abraham Diaz, Office of Vehicle Safety Compliance, the National

---

<sup>1</sup> Originally dated September 15, 2015 under the name of its parent company Toyo Tire Holdings of Americas Inc., and refiled under its own name on November 5, 2015.

Highway Traffic Safety Administration (NHTSA), telephone (202) 366-5310, facsimile (202) 366-5930.

**SUPPLEMENTARY INFORMATION:**

**I. Overview:** Pursuant to 49 U.S.C. 30118(d) and 30120(h) (see implementing rule at 49 CFR part 556), Nitto submitted a petition for an exemption from the notification and remedy requirements of 49 U.S.C. Chapter 301 on the basis that this noncompliance is inconsequential to motor vehicle safety.

Notice of receipt of the petition was published, with a 30-day public comment period, on December 14, 2015 in the Federal Register (80 FR 77415). No comments were received. To view the petition and all supporting documents log onto the Federal Docket Management System (FDMS) website at: <http://www.regulations.gov/>. Then follow the online search instructions to locate docket number "NHTSA-2015-0113."

**II. Tires Involved:** Affected are approximately 1,059 Nitto NT05 size 295/35ZR18 99W passenger car tires manufactured between December 14, 2014 and August 1, 2015.

**III. Noncompliance:** Nitto explains that the noncompliance is that the sidewall markings on the subject tires do not include the correct generic name for the plies in the tread and sidewall area of the tires as required by paragraph S5.5(e) of FMVSS No. 139. Specifically, the subject tires are marked with "Tread 2 Steel 2 Rayon 1 Nylon; Sidewall 3 Rayon." The correct marking

should be "Tread 2 Steel 2 Polyester 1 Nylon; Sidewall 3 Polyester."

**IV. Rule Text:** Paragraph S5.5(e) of FMVSS No. 139 requires in pertinent part:

S5.5 *Tire markings*. Except as specified in paragraphs (a) through (i) of S5.5, each tire must be marked on each sidewall with the information specified in S5.5(a) through (d) and on one sidewall with the information specified in S5.5(e) through (i) according to the phase-in schedule specified in S7 of this standard. ...

(e) The generic name of each cord material used in the plies (both sidewall and tread area) of the tire; ...

**V. Summary of Nitto's Analyses:** Nitto stated its belief that the subject noncompliance is inconsequential to motor vehicle safety for the following reasons:

- (1) Nitto believes that in the Safety Act Congress acknowledged that there are cases where a vehicle or equipment may fail to comply with a safety standard, but that the impact on motor vehicle safety is so slight that an exemption from the notice and remedy requirements of the Safety Act is justified.
- (2) Nitto states that the subject tires meet all other performance and regulatory requirements of FMVSS No. 139.
- (3) Nitto has not received any complaints, claims, or warranty adjustments related to this noncompliance.

- (4) Nitto believes that NHTSA has previously granted inconsequential noncompliance petitions for noncompliances that it believes are similar to the subject noncompliance.

Nitto has additionally informed NHTSA that it has corrected the noncompliance so that future production of the subject tires will comply with all applicable labeling requirements of FMVSS No. 139.

In summation, Nitto believes that the described noncompliance of the subject tires is inconsequential to motor vehicle safety, and that its petition, to exempt Nitto from providing recall notification of noncompliance as required by 49 U.S.C. 30118 and remedying the recall noncompliance as required by 49 U.S.C. 30120 should be granted.

**NHTSA'S DECISION:**

*NHTSA'S Analysis:* The agency agrees with Nitto that the noncompliances are inconsequential to motor vehicle safety. The agency believes that the true measure of inconsequentiality to motor vehicle safety in this case is that there is no effect of the noncompliances on the operational safety of vehicles on which these tires are mounted.

Although tire construction affects the strength and durability, neither the agency nor the tire industry provides information relating tire strength and durability to the ply

cord material in the tread and sidewall. Therefore, tire dealers and customers should consider the tire construction information along with other information such as load capacity, maximum inflation pressure, and tread wear, temperature, and traction ratings, to assess performance capabilities of various tires.

In the agency's judgement, the incorrect labeling of the tire construction information will have an inconsequential effect on motor vehicle safety because most consumers do not base tire purchases or vehicle operation parameters on the ply material in a tire.

*NHTSA'S Decision:* In consideration of the foregoing, NHTSA finds that Nitto has met its burden of persuasion that the subject FMVSS No. 139 noncompliance in the affected tires is inconsequential to motor vehicle safety. Accordingly, Nitto's petition is hereby granted and Nitto is consequently exempted from the obligation of providing notification of, and a free remedy for, that noncompliance under 49 U.S.C. 30118 and 30120.

NHTSA notes that the statutory provisions (49 U.S.C. 30118(d) and 30120(h)) that permit manufacturers to file petitions for a determination of inconsequentiality allow NHTSA to exempt manufacturers only from the duties found in sections 30118 and 30120, respectively, to notify owners, purchasers, and dealers of a defect or noncompliance and to remedy the defect or noncompliance. Therefore, this decision

only applies to the subject tires that Nitto no longer controlled at the time it determined that the noncompliance existed. However, the granting of this petition does not relieve equipment distributors and dealers of the prohibitions on the sale, offer for sale, or introduction or delivery for introduction into interstate commerce of the noncompliant tires under their control after Nitto notified them that the subject noncompliance existed.

**Authority:** (49 U.S.C. 30118, 30120: delegations of authority at 49 CFR 1.95 and 501.8)

**Jeffrey M. Giuseppe,**  
*Director,*  
*Office of Vehicle Safety Compliance.*

**BILLING CODE 4910-59-P**

[FR Doc. 2016-07142 Filed: 3/29/2016 8:45 am; Publication Date: 3/30/2016]